

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

LISA SIMS AND MATTHEW SIMS

*

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v.

* Civil No. JFM-14-3035

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PROGRESSIVE DIRECT
INSURANCE CO.

MEMORANDUM

This action was originally instituted in the Circuit Court of Greene County, Missouri.

Defendant removed the action to this court. Plaintiffs have filed a motion to remand.

The action was properly removed and technically it may well be that the motion to remand should be denied. However, plaintiffs now agree that Count III – which seeks to state a claim for a bad faith denial of coverage – does not state a claim upon which relief can be granted. Further, plaintiffs state that the highest possible award for attorneys' fees would be \$16,545.00. Of course, if plaintiffs were to attempt to proceed with a bad faith claim or seek attorneys' fees in excess of \$16,545.00, they would be judicially estopped from doing so in light of the representations that they have made in seeking remand. Thus, the only remaining claim is for \$50,000 under the subject insurance policy. That claim is best litigated in state court since it is well below the jurisdictional amount necessary for subject matter jurisdiction in this court.

A separate order granting plaintiffs' motion to remand and remanding this case to the Circuit Court for Greene County, Missouri is being entered herewith.

Date: March 14, 2014

/s/
J. Frederick Motz
United States District Judge